UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 20

SUBREGION 37

and TBR PROPERTY, LLC, a SINGLE
EMPLOYER, d/b/a TURTLE BAY RESORTS,
and BENCHMARK HOSPITALITY, INC.

Cases 37-CA-6601-1
37-CA-669-1
37-CA-669-1
37-CA-6730-1
37-CA-6753-1
37-CA-6756-1
UNITE HERELLOCAL 5

OAKTREE CAPITAL MANAGEMENT, LLC,

37-CA-6753-1 37-CA-6756-1 UNITE HERE! LOCAL 5 37-CA-6816-1 37-CA-6826-1 37-CA-6827-1 37-CA-6835-1 37-CA-6840-1 37-CA-6875-1 37-CA-6877-1

MOTION TO STRIKE RESPONDENTS' AMENDED BRIEF IN SUPPORT OF EXCEPTIONS TO ALJ DECISION

37-CA-6878-1

Pursuant to Section 102.47 of the Board's Rules and Regulations, and for the reasons set forth below, Counsel for the General Counsel moves to strike Respondents' Amended Brief in Support of Exceptions to ALJ Decision.

I. Background

On about August 22, 2006, Respondents filed with the Board a Motion for Permission to Exceed Increased Page Limit for Brief in Support of Exceptions to Decision of Administrative Law Judge. Respondents requested a 250 page limit for its Brief in Support of Exceptions. On

August 29, 2006, Associate Executive Secretary Richard Hardick granted in part Respondents' request, stating that Respondents' "[b]rief is not to exceed <u>175 pages</u>."

On about September 10, 2006, Respondents filed their Initial Brief in Support of Exceptions ("Initial Brief") to ALJ Decision. On about December 8, 2006, Counsel for General Counsel filed a Motion to Strike Respondents' Exceptions and Brief in Support of Exceptions to the ALJ Decision. Associate Executive Secretary Hardick issued an order on March 30, 2007, stating *inter alia* that "the arguments in the exceptions and the single-spacing in Respondents' brief, each or combined, far exceed the 175 pages of permitted argument." The Order afforded Respondents an opportunity to refile their "noncompliant documents" to comport with the rules. Respondents filed their Amended Exceptions and Amended Brief in Support of Exceptions ("Amended Brief") on about April 9, 2007.

Respondents' Amended Brief, which once again totals 173 pages, is a nearly verbatim copy of Respondents' Initial Brief. In order to comply with the 175 page limit and yet include virtually all of the approximately 21 pages of single spaced text included in Respondents' Initial Brief, Respondents: (1) removed text from the body of the Initial Brief and placed it in footnotes, which are written throughout Respondents' Amended Brief in 10 point font, rather than 12 point font as required by the Board's Rules and Regulations; ¹ (2) used a ³/₄ of an inch

Regarding the placing of text in footnotes written in font that does not comply with the Board's rules and regulations, compare the following: page 27-28 of Respondents' Initial Brief with footnote 18 on page 26 of Respondents' Amended Brief; page 59 (text from second bullet point) of Respondents' Initial Brief with footnote 36 on page 59 of Respondents' Amended Brief; the first paragraph on page 86 of Respondents' Initial Brief with footnote 55 on page 85 of Respondents' Amended Brief; the first paragraph of page 112 of Respondents' Initial Brief with footnotes 72 and 73 on page 111 of Respondents' Amended Brief; page 113-114 of Respondents' Initial Brief with footnote 74 on page 113 of Respondents' Amended Brief; the middle of page 114 of Respondents' Initial Brief with footnote 75 on page 113 of Respondents' Amended Brief; and the bottom of page 114 of Respondents' Initial Brief with footnote 76 on page 114 of Respondents' Amended Brief.

margin on the right side of each page of their Amended Brief; and (3) placed text from the body of their Initial Brief in block quotations, incorrectly suggesting that the block quotations are taken directly from the Administrative Law Judge's decision.² Regarding this last point, Respondents have in effect taken their summary of the Administrative Law Judge's findings and attempted to represent them as direct quotes from the Judge's decision.³ Respondents' Amended Brief also includes single spaced text in bullet point format. (*See* page 158 of Respondents' Amended Brief.) In addition, Respondents' Amended Exceptions commence with a page and a half of argument.

II. Argument

Section 102.114(d) of the Board's Rules and Regulations states that papers filed with the Board "shall have margins no less than one inch on each side, shall be in a typeface no smaller than 12 characters-per-inch, and shall be double spaced (except that quotations and footnotes may be single spaced)." Respondents have violated this rule in several ways. First, the right hand margin of each page of Respondents' Amended brief is less than one inch. Second, Respondents make extensive use of footnotes that are in 10 point, rather than 12 point, typeface.

Regarding Respondents' placing text from their Initial Brief in block quotations apparently attributed to the Administrative Law Judge, compare the following: the last paragraph on page 106 continuing to 107 of Respondents' Initial Brief with the block quotation on page 106 of Respondents' Amended Brief; pages 107-108 of Respondents' Initial Brief with the block quotation on page 107 of Respondents' Amended Brief; page 109 of Respondents' Initial Brief with the block quotation on page 108 of Respondents' Amended Brief; and page 119 of Respondents' Initial Brief with the block quotation on page 118 of Respondents' Amended Brief.

It is worth noting that Respondents include on page 148 of their Amended Brief a block quotation that purports to be from *Randell Warehouse of Arizona*, 328 NLRB 1034 (1999), but which in fact is a blend of quotations from at least two different cases, *Randell Warehouse* and *Washington Fruit*, 343 NLRB No. 125 (2004), and even separate footnotes in *Randell Warehouse*. This text was double spaced in Respondents' Initial Brief. (*See* page 148 of Respondents' Initial Brief.)

Third, Respondents include text from their Initial Brief as single-spaced block quotations in their Amended Brief. Respondents Exceptions also contain over one page of argument. Therefore, in light of all of the above, Respondents once again have far exceeded the 175 page limit permitted by the Board in this case.

III. Conclusion

Despite having been afforded a second opportunity to comply with the Board's Rules and Regulations, which were clearly identified in the Board's Order dated March 30, 2007, Respondents have submitted another brief that violates those Rules and Regulations.

WHEREFORE, in consideration of the above, Counsel for General Counsel respectfully requests that the Board grant the instant motion to strike Respondents' Amended Brief in Support of Exceptions to ALJ Decision in its entirety.

Dated at Honolulu, Hawaii, this 12th day of April 2007.

Respectfully submitted,

Meredith A. Burns

Counsel for the General Counsel National Labor Relations Board,

() Bours

Region 20, SubRegion 37

300 Ala Moana Blvd. 7-245

Honolulu, Hawaii 96850

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the Motion to Strike Respondents' Amended Brief in Support of Exceptions to ALJ Decision, has this day been served as described below upon the following persons at their last-known address:

1	copy	

Daniel T. Berkley, Esq.

Via Federal Express

Gordon & Rees LLP

275 Battery Street, Suite 2000 Embarcadero Center West San Francisco, CA 94111

1 сору

Sarah O. Wang, Esq.

Via U.S. Mail

Marr Hipp Jones & Wang, LLLP

Pauahi Tower

1001 Bishop Street, Suite 1550

Honolulu, HI 96813

1 copy

Jennifer Cynn

Via U.S. Mail

In-House Counsel
UNITE HERE! Local 5

1050 Queen Street, Suite 100 Honolulu, Hawaii 96814

1 copy

Kristin L. Martin, Esq.

Via Federal Express

Davis, Cowell & Bowe LLP 595 Market Street, Suite 1400 San Francisco, CA 94105

DATED at Honolulu, Hawaii, this 12th day of April 2007.

Meredith A. Burns

Counsel for the General Counsel National Labor Relations Board

mulith O. Bruns

Subregion 37

300 Ala Moana Boulevard

Room 7-245 P. O. Box 50208 Honolulu, HI 96850